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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963
No. 244

JOHN FRANK BUTLER,

Appellant,

vs.

WALTER DUNBAR, Director of Corrections of the State of California,

Appellee.

On Appeal From the Supreme Court of the State of California.

JURISDICTIONAL STATEMENT.

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JURISDICTIONAL STATEMENT.

Appellant, John Frank Butler, appeals from a judgment of the Supreme Court of California, entered on February 14, 1963, denying his application for a writ of habeas corpus, discharging the order to show cause theretofore issued, and remanding him to custody. He submits this statement to show that the Supreme Court of the United States has jurisdiction and that a substantial federal question is presented.

Opinion Below.

The opinion of the California Supreme Court in the case at bar is reported at 59 Adv. Cal. 169, 378 P. 2d 812, and 28 Cal. Rptr. 508. A copy of that opinion

is attached hereto as Appendix A. The opinion of the Supreme Court of California in the companion case of *In re De La O*, reference to which is necessary to ascertain the grounds of the judgment, is reported at 59 Adv. Cal. 140, 378 P. 2d 793, and 28 Cal. Rptr. 489. A petition for certiorari in the latter case has been filed in this court, where it is entitled *De La O v. California*, October Term, 1962, No. 1503.

Jurisdiction.

This habeas corpus proceeding was commenced in the Supreme Court of California pursuant to California Penal Code Sections 1472 and 1473. The judgment of the Supreme Court of California, denying the petition for a writ of habeas corpus, discharging the order to show cause previously issued, and remanding appellant to custody, was handed down and entered on February 14, 1963. (Opinion, App. A.) Appellant's petition for rehearing was denied on March 13, 1963. Notice of appeal was filed with the Clerk of the Supreme Court of California on May 3, 1963.

The jurisdiction of the Supreme Court of the United States on this appeal is conferred by Title 28, United States Code, Section 1257(2). Appellant challenges the validity of California Penal Code Sections 6500-6510, pursuant to which he is restrained of his liberty, on the ground that those sections are a statute repugnant to the Constitution of the United States, and the decision of the highest court of the state was in favor of its validity. The following cases sustain the jurisdiction of the Supreme Court to review the judgment on appeal on this case. *New York ex rel. Bryant v. Zimmerman*, 278 U. S. 63, 70; *Robinson v. California*, 370 U. S. 660.

Statutes Involved.

California Penal Code Sections 6500-6510 are the statutes the validity of which is involved. (Statutes of California 1960 and 1961, Chapter 850, Vol. I, p. 2221, at pp. 2226-2227.) They provide as follows:

"ARTICLE 3. INVOLUNTARY COMMITMENT OF PERSONS NOT CHARGED WITH A CRIME

"6500. A sheriff, chief of police, minister, physician, probation officer, a relative, friend or any other person who believes that a person is addicted to the use of narcotics or by reason of the repeated use of narcotics is in imminent danger of becoming addicted to their use or any person who believes himself to be addicted or about to become addicted may report such belief to the district attorney who may petition the superior court for a commitment of such person to the Director of Corrections for confinement in the narcotic detention, treatment and rehabilitation facility.

"6501. Every person who knowingly contrives to have any person adjudged a narcotic addict under this article, unlawfully or improperly, is guilty of a misdemeanor.

"6502. Upon the filing of a proper petition pursuant to Section 6500, the court shall order the person sought to be committed to be examined by a physician or physicians, by order similar in form to the order for examination prescribed by Section 5050.1 of the Welfare and Institutions Code. The court may also order that the person

be confined pending hearing in a county hospital or other suitable institution if the petition is accompanied by the affidavit of a physician alleging that he has examined such person within three days prior to the filing of the petition and has concluded that, unless confined, such person is likely to injure himself or others or become a menace to the public.

"6503. At least one day before the time of the examination as fixed by the court order, a copy of the petition and order for examination shall be personally delivered to the person.

"6504. The report of the examination by the physician shall be delivered to the court, and if the report is to the effect that the person is not addicted nor in imminent danger of addiction, it shall order the petition dismissed. If the report is to the effect that the person is addicted or in imminent danger of addiction, the court shall set a time and place of hearing and cause notice thereof to be served on the person.

"6505. The court may issue subpoenas for attendance of witnesses at the hearing and the person sought to be committed shall have the right to have subpoenas issued for such purpose. At the hearing the person shall have the right to be represented by counsel, to present witnesses on his behalf, and to cross-examine witnesses. If he is unable financially to employ counsel, the court shall, if requested, appoint counsel for him.

"6506. At the hearing the court shall determine whether the person is addicted to the use of narcotics or in imminent danger of addiction.

If that issue is determined in the negative, the petition shall be denied. If the issue is determined in the affirmative, the court shall order the person committed to the custody of the Director of Corrections for a period of five years, except as this chapter permits earlier discharge.

"6507. Hearing may be waived by consent of the person sought to be committed, expressed in open court.

"6508. If the person so committed or any friend in his behalf is dissatisfied with the order of the court, he may demand a hearing by judge or jury in substantial compliance with the provisions of Section 5125 of the Welfare and Institutions Code.

"6509. If at any time the Director of Corrections concludes that a person committed pursuant to this article is not a fit subject for confinement or treatment in a facility of the Department of Corrections, he may order such person discharged.

"6510. A person committed to the custody of the Director of Corrections pursuant to this article is not required to register pursuant to Article 6 (commencing with Section 11850) of Chapter 7, Division 10 of the Health and Safety Code."

Questions Presented.

1. Does confinement of appellant pursuant to California Penal Code Sections 6500-6510 subject him to cruel and unusual punishment in violation of the Eighth Amendment to the United States Constitution, made applicable to the states by the Fourteenth Amendment?

2. Does confinement of appellant pursuant to California Penal Code Sections 6500-6510 subject him to involuntary servitude in violation of the Thirteenth Amendment to the United States Constitution?

3. Does the legislative classification of persons to be confined pursuant to California Penal Code Sections 6500-6510 deny appellant due process of law or equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution?

Statement of the Case.

Pursuant to California Penal Code Section 6500 a petition was filed in the Superior Court of San Diego County, California, alleging that a deputy sheriff had reported to the district attorney his belief that appellant was addicted to the use of narcotics or in imminent danger of addiction, together with a physician's affidavit to the same effect. An order for appellant's detention was issued. He was confined in the San Diego County Jail and examined by other physicians. The matter was set for hearing. Appellant then applied to the Supreme Court of California for a writ of habeas corpus. Proceedings in the superior court were suspended pending disposition of the petition by the California Supreme Court. [Opinion, App. A, pp. 169-170; Ex. att. to Ret.; Ret. p. 1.][1]

How the federal questions are presented. The petition for habeas corpus alleged, in part:

"THE SAID IMPRISONMENT, DETENTION, CONFINEMENT, AND RESTRAINT

[1]Page references to the record refer to the pagination of the individual documents in the typewritten record.

OF JOHN FRANK BUTLER ARE ILLEGAL. THE ILLEGALITY THEREOF CONSISTS IN THIS:

> "Article 3 of Chapter 11 of Title 7 of Part 3 of the California Penal Code, consisting of Penal Code Sections 6500 through 6510, is on its face and as it is sought to be applied to John Frank Butler, unconstitutional, in that it deprives said John Frank Butler of rights guaranteed him under United States Constitution, Amendments 8 and 13, and the equal protection and due process clauses of Amendment 14, . . ." (Pet. for H.C., p. 5.)

The California Supreme Court issued an order to show cause and admitted appellant to bail. The case was briefed and orally argued. The court disposed of the constitutional questions thus raised in the following language:

> "Petitioner attacks the constitutionality of Penal Code Sections 6400-6555 on substantially the same grounds as those discussed in *In re De La O, supra, ante, p.* ..... For the reasons set forth in our opinion in that case, these contentions are without merit." (Opinion, App. A, p. 170.)[2]

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[2]Appellant's attack is not so broad as indicated by this language. Appellant does not assert the invalidity of Penal Code sections other than 6500-6510, insofar as those other sections are applied to persons who have been convicted of crime. He contends, however, that they may not be validly applied to persons who have not been convicted and that Sections 6500-6510, which produce this result, are unconstitutional. Thus, appellant's contentions affect only 191 of the 1262 persons detained by respondent pursuant to Sections 6400-6555 on January 2, 1963. [Ex. att. Stip. of Jan. 9, 1963.]

The California Supreme Court denied the petition, discharged the order to show cause, and remanded appellant to custody. (Opinion, App. A, p. 170.) Appellant filed a petition for rehearing. On March 12, 1963, the Superior Court of San Diego County committed appellant to the Director of Corrections for five years, except as earlier discharge is provided for by law. [Ex. att. Not. of App.] On March 13, 1963, the petition for rehearing was denied. By stipulation Walter Dunbar, Director of Corrections of the State of California, was substituted as respondent and appellee in place of the Sheriff of San Diego County. [Stipulated April 24, 1963.]

The Questions Are Substantial.

In general. The questions here presented are substantial and were recognized to be so by the court below. The order to show cause was issued and appellant was admitted to bail because the California Supreme Court entertained doubts as to the significance for this case of the decision in *Robinson v. California*, 370 U. S. 660. After having ruled in favor of constitutionality, the California court, in a later case, said:

> "The statute itself is not wholly free from constitutional doubts but in *In re De La O* (1963), *supra*, 59 A. C. 140, 161 [13], we resolved those doubts in favor of upholding the enactments." (*In re Raner*, 59 Adv. Cal. 657, 659, ... P. 2d ....., ... Cal. Rptr. .....)

These expressions of the court, together with others more conveniently set out below, show that the questions presented are substantial and merit plenary consideration on appeal.

Summary of the statutory scheme. Prior to 1961 California had, and it still has, a procedure for civil commitment of narcotic addicts for compulsory treatment. (California Welfare and Institutions Code, Sections 5350-5361.) These sections provide for such treatment in state hospitals under the jurisdiction of the Director of Mental Hygiene. However, in 1961 a study commission reported to the California Legislature that, because of a lack of facilities to carry out a proper program, none but voluntary patients were being accepted. The commission recommended establishment of separate hospital facilities in the Department of Mental Hygiene with an adequate number of trained personnel to give proper treatment to persons civilly committed as narcotics addicts. (*In re De La O*, 59 Cal. 2d 140, 160-161, 378 P. 2d 793, 28 Cal. Rptr. 489.)

In response to this need the Legislature added to the Penal Code the statute here in question, which provides for the commitment, not only of addicts, but also of persons in imminent danger of becoming addicted, to the custody of the Director of Corrections, who operates the state prison system. (Cal. Pen. Code Sections 5002, 5003, 5053.) The procedure for commitment of persons not charged with crime, which is set out in Penal Code Sections 6500-6510, *supra*, is generally similar to that provided for commitment of mentally ill persons. Needless to say, it does not provide the safeguards applicable in criminal cases. The Director of Corrections may detain a person so committed in any of the institutions under his jurisdiction, and while so detained the person is subject to the same laws, rules, and regulations as are felony prisoners.

(Cal. Pen. Code Sections 1202a, 5080, 6400-6401, 6509, 6550-6551.) The term of commitment is three and one-half to five years, with eligibility for parole after six months, in the discretion of the Adult Authority, the agency which determines when prisoners in state prisons shall be paroled. (Cal. Pen. Code Sections 3040, 6403, 6506, 6520.)

Penal Code Sections 6450-6454, which are not applicable to appellant, provide for suspension of criminal proceedings after a determination of guilt and commitment through civil proceedings of defendants found to be addicts or in imminent danger of becoming such.[3] The maximum period of commitment of such persons convicted in the superior court is ten years instead of five, and time served under the civil commitment is credited on any subsequent criminal sentence. (Cal. Pen. Code Sections 6451, 6520.)

The Legislature also created within the Department of Corrections a facility whose principal purpose is,

> "The receiving, segregation, confinement, employment, education, treatment and rehabilitation of persons under the custody of the Department of Corrections or any agency thereof who are or have been addicted to narcotics or who by reason of repeated use of narcotics are in imminent danger of becoming addicted." (Cal. Pen. Code Section 6400.)

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[3]It is under these sections that *De La O v. California*, October term, 1962, No. 1503, arose. If the commitment in that case is invalid, *a fortiori* that in the case at bar is bad. However, commitment as a consequence of conviction of crime is readily distinguishable from the procedure in the case at bar. Therefore, denial of certiorari in *De La O* would not be determinative of the case at bar.

There is no requirement that persons committed under Penal Code Sections 6500-6510 be sent to this facility or that felony convicts not be sent to it. The statute authorizing transfers between institutions applies equally to both classes of persons. (Cal. Pen. Code Section 5080.)

Cruel and unusual punishment. The United States Supreme Court held in *Robinson v. California*, 370 U. S. 660, that imprisonment of a narcotic addict because of his addiction constitutes cruel and unusual punishment. However, the court also said,

> "In the interest of discouraging the violation of such laws, or in the interest of the general health or welfare of its inhabitants, a State might establish a program of compulsory treatment for those addicted to narcotics. Such a program might require periods of involuntary confinement. And penal sanctions might be imposed for failure to comply with established compulsory treatment procedures." (*Robinson v. California*, 370 U. S. 660, 664-665.)

The question in the case at bar is whether the confinement authorized by the statute is within the constitutional prohibition or is saved by the doctrine set forth in the dictum.

The approach of the California court to the resolution of the question appears in the following quotation:

> "The Legislature, as has been shown, created in response" (to the report of the study commission referred to above) "a program and an institution designed to achieve these goals, but then placed

them under the direction and control of the Director of Corrections and codified the new statutory scheme in the Penal Code. The introduction of these external indicia of criminality was, in our view, both *unnecessary* and unfortuante, as they may well constitute those aspects of the program which are most resented by the persons committed (who should be explicitly designated as patients, without indicia of criminality) and most noticed by others on their return to society, thus producing a possibly negative effect on the chances of success. Mindful, however, of our duty to uphold every legislative enactment unless it is *in any event* palpably obnoxious to the Constitution, we are of the opinion that the demonstrably civil purpose, mechanism, and operation of the program *outweigh* its external 'criminal' indicia, and hence that petitioner's commitment and confinement thereunder do not constitute cruel and unusual punishment within the meaning of *Robinson v. California* (1962), *supra*, 370 U.S. 660." (*In re De La O*, 59 Adv. Cal. 140, 161, 378 P. 2d 793, 28 Cal. Rptr. 489. Emphasis added.)

We submit that the approach is incorrect and produced the incorrect result. The dictum in *Robinson* only authorizes such confinement as is necessary to treat the disease of addiction. Any additional confinement or harsher conditions of confinement infringe the Constitution.[4] If the statute imposes any such unnecessary confinement, it violates the Constitution, no matter

[4]See *Robinson v. California*, 370 U. S. 660, 677-678, Douglas, J., concurring, footnote 5, relating to medical treatment in jail.

how civil it is.[5] There is no occasion to weigh the degree of infringement against the civil nature of the proceeding or the good motives of the Legislature.

In the course of weighing the penal against the civil aspects of the statute, the California court has attempted to explain away one by one the myriad of punitive aspects of the confinement. The short answer to this is to look at the whole picture at once. Such a look discloses a commitment by civil proceedings to penal servitude with such treatment facilities available as ought to be present in any modern penal system. The long answer, a detailed point by point refutation of the opinion and discussion of the factors omitted from it, is beyond the scope of this statement. We shall confine our discussion to one of the "criminal indicia," minimized by the court—the matter of the duration of the confinement.

The confinement contemplated by the doctrine of the *Robinson* dictum would last as long as necessary to carry out the treatment, and no longer. The confinement could not be prolonged for any purpose other than treatment. Its duration would therefore be determined in each case on the basis of individual need by those doing the treating.

Under the statute here involved there is a minimum period of confinement of six months, a maximum of five years, and a minimum for discharge of three and one-half years. (Cal. Pen. Code Sections 6403, 6506, 6520.) To this extent the Legislature has prevented

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[5]This conclusion may not be avoided by prescribing imprisonment as treatment for an illness. *In re Maddox*, 351 Mich. 358, 88 N. W. 2d 470.

those doing the treating from imposing only the amount of confinement needed in each individual case. Such legislative minimum and maximum periods of confinement are wholly inconsistent with the asserted purpose of the statute.

The court below fully recognized that the statutory time limits are fatal to the validity of the statute. In *De La O*,[6] in the course of a discussion directed toward showing that a statute containing such time limits is the same as one without them, the court went out of its way to hold that habeas corpus was available to obtain "earlier discharge." The availability of habeas corpus was irrelevant to the discussion, unless the holding of the court was that discharge would be permitted, *despite the statutory time limits*. The only ground for disregarding the time limits on habeas corpus is that *confinement subject to them violates the Constitution*. Q.E.D.

We have suggested above that confinement for a longer period or subject to harsher conditions than are required for treatment cannot be validated or, "outweighed," by the civil procedure or the inclusion of proper purposes. We shall, therefore, reserve detailed discussion of the matters placed by the lower court in the civil side of the balance. But we will mention one factor which we think the court put on the wrong side of the scales.

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[6]59 Adv. Cal. 140, 152-155. The fallacy running through court's discussion is the assumption that, because those doing the treating might find some confinement appropriate in each individual case, the Legislature may usurp this decision and lay down an arbitrary minimum and maximum applicable to all cases, without regard to individual needs.

As the court pointed out, the legislatively defined purpose of the program and the institution created under it is,

> "the *receiving, segregation, confinement, employment, education*, treatment and rehabilitation of persons under custody of the Department of Corrections or any agency thereof who are, or *have been* addicted to narcotics or by reason of repeated use of narcotics are in imminent danger of becoming addicted." (Cal. Pen. Code Secs. 6400, 6551; *In re De La O, supra*, emphasis added.)

The court below ignored the emphasized language, which is appropriate to a statute creating a modern prison, but not in one creating a hospital. The Legislature did not ignore the language. The Honorable Louis H. Burke, Presiding Justice of the California District Court of Appeal, Second Appellate District, Division Three, and one of the draftsmen of the statute, had this to say on the subject:

> "Now there is one thing about the philosophy of this bill that I think all of us ought to have crystal clear, because we sold the program to the legislature on this basis. This bill is for the enforced detention and treatment of *all* heroin addicts. Let's talk first of detention. The program differs somewhat from the program at Atascadero for the sex offenders. If a man doesn't make progress at Atascadero; if he's not amenable to treatment, he's returned to the court and is sentenced to the State prison or whatever else the judge has in mind for him. In this program, if he is not amenable to treatment, he stays in the deten-

> tion facility for the full five years, if he's committed under the misdemeanor section, or if he's committed through the psychiatric division with no criminal charge against him, or for the full ten years, if he's committed under the felony section. Thus, the bill provides for detention whether or not the addict shows any improvement. And this is the story that we've told everybody, that the number one objective of this measure is to get the narcotic addict off the street. If he doesn't show improvement, he will stay off the street through continuing detention." (California Department of Corrections Training Institute on the Problem of Narcotic Addiction,[7] pp. 9-10.)

Before the statute was passed it was amended to eliminate a requirement for commitment that the person would benefit by treatment in a Department of Corrections facility. (Senate Bill 81, 1961 Session.) It is therefore, "crystal clear," that the statutory purpose is not limited to treatment. It includes imprisonment of those who, for whatever reason, do not get well—cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

We are indebted to the Sheriff of San Diego County for a succinct summary of this aspect of the case. After the Supreme Court of California had handed down its decision and appellant had been committed, the Sheriff filed his Arrest Disposition Report with the California Bureau of Criminal Identification and

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[7]This publication, though not this portion, was relied upon below both by the Attorney General and by the court. (Ret. p. 17; *In re De La O*, 59 Adv. Cal. 140, 156, fn. 11; 378 P.2d 812, 28 Cal. Rptr. 508.) It is hereafter cited as, "Institute."

Investigation and the Federal Bureau of Investigation. His report—Butler, John Frank, was sentenced to prison, Chino, 3/12/63, on a charge of 6500 P. C. [Ex. att. Not. of App.]

Involuntary servitude. The effects of the various constitutional provisions in the case at bar are closely intertwined. Which provision is violated depends to some extent upon how a particular problem is viewed. Thus, much of what has been said about cruel and unusual punishment applies equally to involuntary servitude. Since the case at bar is civil, the express exception in the Thirteenth Amendment of punishment for crime is not applicable.

Compulsory treatment of disease evidently does not violate the Thirteenth Amendment. This must be because of an additional implied exception to the prohibition or because, "servitude," is defined to exclude such treatment. Thus, the definition of what constitutes a proper involuntary commitment for disease also establishes the location of one boundary of the Thirteenth Amendment. We shall discuss the invalidity of the legislative classification here involved as a violation of the equal protection and due process clauses. Since an arbitrarily broad definition of the class of persons to be confined oversteps the boundary of the Thirteenth Amendment, in addition to denying equal protection and due process, that discussion should also be considered as applicable here.

One other notion which should be considered in connection with the Thirteenth Amendment is that the case at bar involves a quarantine. *(In re De La O*, 59 Adv. Cal. 140, 160; 378 P. 2d 812; 28 Cal.

Rptr. 508.) It does not. Quarantine is the isolation, by confinement or otherwise, of a person who has, or is suspected of having, an infectious or contagious disease.[8] Its purpose is not treatment, but the prevention of the spread of communicable disease. The confinement in the case at bar does not fit the concept. An attempt to make it fit will lead to sorry consequences.

It is characteristic of communicable diseases that the disease carrier cannot choose whether he will transmit the disease and the recipient cannot choose whether he will contract it. Therefore, the only way to prevent infection is to prevent contact. Such is not the case with narcotic addiction. As we shall see, California has not limited its definition of addicts to persons who have lost the power of self-control. Moreover, it commits persons in, "imminent danger," of becoming addicted, who clearly have not lost that power. Assuming that addicts are likely to convert others to narcotic use, the converts must become such by their own choice. The techniques of conversion might involve anything from theoretical discussions protected by the First Amendment to felonies such as smuggling, possession, or sale of narcotics. However, the Thirteenth Amendment does not permit confinement of people simply because they are thought to be potential criminals, even if the procedure is couched in the terminology of disease. Such a procedure is not a quarantine.

Unreasonable classification. Under the police power a state may enact legislation providing for the involun-

[8]See Webster's Third New International Dictionary, p. 1859. But note definitions 6 and 7 in which the term is applied to punishments.

tary commitment for treatment of persons suffering from disease. This power in the field of human rights is analogous to the power of the public authorities to destroy buildings in the path of a conflagration to prevent the spread of fire. Both powers must be limited to cases of necessity, or they will swallow up the constitutional safeguards to which they are exceptions. Extensions of both beyond what is necessary deny the persons to whom they are applied equal protection of the laws and due process of law in violation of the Fourteenth Amendment.

As we have seen, this court in *Robinson v. California*, 370 U. S. 660, 665, indicated that the power compulsory treatment is applicable to the disease of narcotic addiction. In so doing the court pointed to California Welfare and Institutions Code Section 5350 as a statute exercising this power. Presumably the court had in mind the disease of narcotic addiction as defined in that section. The significant aspect of the definition for our purposes is that the statute limits commitment to those addicts who have lost the power of self-control.

A leading case in this field, which was relied upon by the court below, is *Minnesota ex rel. Pearson v. Probate Court*, 309 U. S. 270. In that case a Minnesota statute providing for the commitment of sexual psychopaths was attacked as a denial of due process and equal protection. The United States Supreme Court upheld the Minnesota procedure. However, in

doing so the court was at pains to point out that Minnesota had construed the statute as limited in its application to persons who had evidenced,

> "an utter lack of power to control their sexual impulses and who, as a result, are likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of their uncontrolled and uncontrollable desire." (309 U. S. 270, 273.)

The Supreme Court held that it was bound by Minnesota's construction of the statute and that, under that construction, the statute was valid. In so holding the court said,

> "In advance of a decision by the state court applying the statute to persons outside that definition, we should not adopt a construction of the provision which might render it of doubtful validity." (309 U. S. 270, 274.)

Thus, the decision of the *Pearson* case was conditioned upon the limitation of the application of the statute to persons who had lost the power of self-control.

California Penal Code Sections 6500 *et seq.* are not limited in their application to persons who have lost the power of self-control. California has adopted a definition of addiction which includes persons who have not lost this power.[9] Moreover, persons in imminent

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[9]In the court below appellant contended that the statute was ambiguous as to the meaning of the term, "addicted." The court resolved the ambiguity by holding that the term, "addicted," had a commonly understood meaning as had been held in *People v. Kimbley*, 189 Cal. App. 2d 300, 303; ..... P. 2d .....; 11 Cal. Rptr. 519. (*In re De La O*, 59 Adv. Cal. 140, 165; 378 P. 2d 793; 28 Cal. Rptr. 489.) The issue in *Kimbley*, a criminal case, was whether loss of the power of self-control was an element of the definition. The court held that it was not, expressly

danger of addiction have not lost the power of self-control for persons who have lost that power are addicts within any definition. Thus the statute enters the area of "doubtful validity" referred to by the court in the *Pearson* case and thereby violates the equal protection and due process clauses of the Fourteenth Amendment.

There are other arbitrary aspects of the classification created by the statute here involved. We have noted above that the statute was amended before passage to eliminate any requirement of benefit from treatment to the person to be committed. There is no discretion in the committing court. If it finds that a person is an addict or in imminent danger within the meaning of the law, he must be committed. (Cal. Pen. Code Section 6506.) Thus, a terminal cancer patient addicted to morphine in the course of alleviation of his pain must be committed.[10] Physicians who have become addicted must be committed even though there is a treatment program for them with a record of 92% cures without commitment.[11] The Synanon Foundation, a voluntary addict rehabilitation program somewhat similar to Alcoholics Anonymous, can exist in California only at the sufferance of a district attorney who chooses to ignore the law for the benefit of its inmates.[12] Perhaps the crowning absurdity is that pa-

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rejecting a definition using the term, "in any technical sense as it is used in determining the criteria for commitment of narcotic users or other purposes." (189 Cal. App. 2d 300, 306; Reply pp. 18-20.)

[10]The statute contains no exception for persons necessarily addicted in the course of treatment of disease or alleviation of pain.

[11]Institute, pp. 29, 37-38.

[12]Institute, pp. 10-11.

rolees and out-patients from all other treatment programs, and apparently even parolees from the California Rehabilitation Center itself, fall within the legislative classification and must, if a petition is filed against them, be committed.

Appellant respectfully submits that this statutory scheme cannot be brought within the limits of the state power to provide for compulsory treatment of disease, that it is arbitrary and unreasonable, and that it denies appellant equal protection of the laws and due process of law.

Conclusion. The issues at stake in the case at bar are much broader than the mere question whether a particular statutory procedure denies a few fundamental constitutional rights to a few alleged narcotic users. In the final analysis what is at stake is our whole system of criminal law with its procedural safeguards developed over centuries. As medicine, psychology, and the social sciences develop, many things which we have previously thought of as crimes will come to be considered as diseases. They will require treatment rather than punishment. The instant case presents a graphic example of that process. Little more than a year ago narcotic addiction was a crime in California, for which adequate treatment was practically non-existent. Today it is a disease. The question is whether in the process of this development the procedural safeguards of our law applicable in criminal cases will become fossils, pristine and unimpaired, but inapplicable to the problems and the procedures of the day.

Problems like the present ones are not new. Criminal procedure was not abolished when the consequence of

felony conviction was changed from death to imprisonment. Ways were found to preserve the right to jury trial when law and equity were combined. So now it is necessary to lay down standards whereby it may be determined which new sicknesses, formerly regarded as crimes, require the retention and application of the criminal procedures which have preserved us from tyranny for so long.[13] So too it is necessary to establish standards whereby we may distinguish which treatments for new diseases are merely the old "treatments" for crime. Such questions are as substantial as any that this Honorable Court will ever face. They are the questions presented in the case at bar.

Respectfully submitted,

J. PERRY LANGFORD,
Attorney for Appellant.

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[13]We do not contend that people who have not lost the power of self-control should not be treated. It is our position that persons who are criminally accountable for their conduct must be convicted in a criminal proceeding before the state may forcibly undertake to treat them on account of that conduct.

APPENDIX A.

[Crim. No. 7231. In Bank. Feb. 14, 1963.]

In re JOHN FRANK BUTLER on Habeas Corpus.

[1] **Poisons—Commitment for Narcotics Addiction —Appeal.**— Petitioner for habeas corpus is in no position to complain that the superior court before which a hearing for petitioner's commitment as a narcotic addict or potential addict is scheduled is without jurisdiction to proceed because the court's order of detention and examination (Pen. Code, § 6502) erroneously recited that petitioner was in the county of the court's jurisdiction whereas he was in another county, where petitioner alleges elsewhere that he voluntarily returned to the county in which the order was made and surrendered to the sheriff there for confinement under the court's order.

PROCEEDING in habeas corpus to secure release from custody after commitment to a narcotics rehabilitation facility. Order to show cause discharged and petition denied.

Edgar G. Langford and J. Perry Langford for Petitioner.

Stanley Mosk, Attorney General, William E. James, Assistant Attorney General, Gordon Ringer, Deputy Attorney General, James Don Keller, District Attorney (San Diego), and Bruce Iredale, Deputy District Attorney, for Respondent.

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[1] See **Cal.Jur.2d**, Drugs and Druggists, § 33.
McK. Dig. Reference: [1] Poisons, § 8.5.

SHAUER, J.—This is a companion case to *In re De La O* (Crim. 7208), [1]*ante*, p. .... [.. Cal.Rptr. ...., ... P.2d ....], also decided this day.

Proceedings for the commitment of John Frank Butler (hereinafter called petitioner) to the California Rehabilitation Center as a narcotics addict (in other words, for therapeutic treatment for narcotic drug addiction) were instituted pursuant to Penal Code sections 6500-6510, which deal with commitment to that facility of "persons not charged with a crime." A hearing was duly scheduled to determine whether petitioner "is addicted to the use of narcotics or in imminent danger of addiction." (*Id.*, § 6505.) A petition for the writ of habeas corpus was filed in this court on behalf of petitioner by his attorney, and the superior court suspended the proceedings pending our disposition of the petition. Because we at that time entertained some doubt as to the possible significance of the decision of the United States Supreme Court in *Robinson v. California* (1962) 370 U.S. 660 [82 S.Ct. 1417, 8 L.Ed. 758], we directed an order to show cause to issue and ordered petitioner released on bail.

Petitioner attacks the constitutionality of Penal Code sections 6400-6555 on substantially the same grounds as those discussed in *In re De La O, supra*, [1]*ante*, p..... For the reasons set forth in our opinion in that case, these contentions are without merit.

Petitioner presents two additional points not advanced in *De La O*, neither of which is well taken.

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[1]Advance Report Citation: *Ante*, p. 140.

First, he complains that his original arrest (for violation of Health and Safety Code section 11500), which resulted in a court-ordered examination by a physician and led to institution of commitment proceedings under the subject statute, was illegal. But there is filed with this court, by stipulation, the police report of the events leading up to petitioner's arrest, showing a state of facts amply sufficient to constitute reasonable cause for that arrest within the meaning of Penal Code section 836, subdivision 3.

[1] Second, petitioner contends that the Superior Court of San Diego County is without jurisdiction to proceed with the commitment hearing because its order of detention and examination (pursuant to Pen. Code, § 6502) erroneously recited that petitioner was then in San Diego County, whereas in fact he was in Los Angeles County. But petitioner is in no position to complain of the asserted irregularity (if any) of that order, as he elsewhere alleges that he voluntarily returned to San Diego and "surrendered himself to the sheriff of San Diego County for confinement under the order aforementioned. . . ."

The order to show cause is discharged, the petitioner is remanded to custody, and the petition for habeas corpus is denied.

Gibson, C. J., Traynor, J., McComb, J., Peters, J., Tobriner, J., and Peek, J., concurred.

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IN THE

Supreme Court of the United States

October Term, 1963.
No. 244

JOHN FRANK BUTLER,

Appellant,

vs.

WALTER DUNBAR, Director of Corrections of the State of California,

Appellee.

On Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS.

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On Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS.

Appellee moves to dismiss this appeal because it fails to present a substantial federal question. The motion is made pursuant to the 16th rule of this Court.

Statement.

The appeal is from an order of the Supreme Court of California, dated February 14, 1963, denying Butler's petition for a writ of habeas corpus. In his petition, Butler challenged the constitutionality of Sections 6500-6510 of the California Penal Code. The opinion of the Court below is reported at 59 A. C. 169, and 28 Cal. Rptr. 508. It is to be read together with the opinion in the companion case of *In re De La O,* reported at 59 A. C. 140, and 28 Cal. Rptr. 489, certiorari denied *sub nom. De La O v. California,* No. 1503, October Term, 1962. The appeal poses no question of substance not already disposed of by the denial of certiorari in that case.

ARGUMENT.

Appellant is confined in the California Rehabilitation Center, a facility of the California Department of Corrections, established in accordance with a statutory program for the involuntary commitment of narcotic addicts and persons who, through repeated use of narcotics, are in imminent danger of becoming addicted. (Cal. Pen. Code, § 6400 *et seq.*) Butler was committed to the Rehabilitation Center under the provisions relating to the involuntary commitment of persons not charged with crime. (Cal. Pen. Code, § 6500 *et seq.*) The Center is defined by law as a facility for the "receiving, segregation, confinement, employment, education, treatment and rehabilitation" of addicts and persons in imminent danger of becoming addicts. (Cal. Pen. Code, §§ 6400, 6551.)[1] Appellant concedes, as he must (Jurisdictional Statement, p. 11), that California has the power to "establish a program of compulsory treatment for those addicted to narcotics. Such a program of treatment might require periods of involuntary confinement. And penal sanctions might be imposed for failure to comply with established compulsory treatment procedures." (*Robinson v. California*, 370 U. S. 660, 665.) So conceding, appellant nevertheless contends that he should not be where he is because he is undergoing cruel and unusual punishment, is held in involuntary servitude and is the victim of an improper legislative classification.

The foregoing contentions were convincingly answered by the Court below in deciding the companion case. (*In re De La O*, 59 A. C. 140, 28 Cal. Rptr.

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[1]Whatever the Sheriff of San Diego County may think (Jurisdictional Statement, pp. 16-17), it is not a prison. (*In re De La O*, 59 A. C. 140, 149-150, 28 Cal. Rptr. 489, 495-496.)

489.) Believing that *De La O* is dispositive of Butler's appeal, appellee will limit its argument to the refutation of a few of his specific contentions.

1. Butler implies (Jurisdictional Statement, pp. 10, 13) that the term of his confinement is three and one-half to five years. This is not so. He will be eligible for parole at the conclusion of six months' confinement. (Cal. Pen. Code, §§ 6403, 6506, 6520.)

2. Butler contends (Jurisdictional Statement, p. 14) that the fixing of a minimum and maximum term of confinement is inconsistent with the purpose of the statute. This contention is based upon a misconception of certain language in *De La O* (59 A. C. at pp. 153-155, 28 Cal. Rptr. at pp. 497-498), holding that persons committed to the Center may obtain judicial review by way of habeas corpus of a refusal or failure to parole them before the expiration of the maximum term. This language was proper since the statute contains no express provision for judicial inquiry into an administrative decision to withhold parole in an individual case. Surely it was not a covert confession of invalidity for the Court below to hold that the writ is available for that purpose. For example, those unfortunates who have been committed to a state hospital as mentally ill persons may seek judicial review of the question of their mental condition. (Cal. Welf. & Inst. Code, § 6620.) On appellant's theory, they too are undergoing cruel and unusual punishment. And were there no maximum limit to the potential period of his confinement, Butler would no doubt be contending that he had been sentenced to penal servitude for life.

3. Butler says (Jurisdictional Statement, pp. 15-16) that in upholding the statute the Court below ignored certain express functions of the Center, namely, to receive, segregate, confine, employ and educate the ad-

dict. Granted that the Center is not a hospital. Granted that patients do no work in hospital. Granted that in most cases a hospital does not educate its patients. But the author of this motion knows of one man who was taught to read in the Rehabilitation Center and it must be borne in mind that patients in hospital are received, segregated and confined.

4. Butler engages (Jurisdictional Statement, pp. 17-18) in a theoretical discussion of the meaning of "quarantine." Whatever the scope of a quarantine, it cannot be denied that two of the express purposes of the statute are the *treatment* and *rehabilitation* of narcotic addicts and those in imminent danger of becoming addicted. To equate rehabilitation and treatment with involuntary servitude is to snap the spine of the dictionary.

5. Butler urges (Jurisdictional Statement, pp. 18-21) that the statutory classification is arbitrary and unreasonable. In this connection he says that the definitions of "addict" and one in "imminent danger" of addiction are so broadly conceived as to require the commitment of a terminal cancer patient "addicted" to morphine in the course of alleviating his pain. It is a sufficient answer to this contention to point out that the constitutionality of the statute cannot be made to depend upon "gossamer possibilities" of a district attorney making a fool of himself.

Conclusion.

California's program for the involuntary commitment of narcotic addicts became effective in September 1961, nearly a year before the decision of this Court that addiction is a sickness and that the State may not put an addict in jail, then throw away the key. (*Robinson v. California, supra*, 370 U. S. 660.) Apparently But-

ler is not yet convinced by that decision, for he says at the close of his brief (Jurisdictional Statement, p. 23, fn. 13): "We do not contend that people who have not lost the power of self-control should not be treated. It is our position that persons who are *criminally accountable* for their conduct must be convicted in a *criminal proceeding* before the state may forcibly undertake to treat them on account of that conduct." But appellee is unwilling to regard Butler as a criminal and asks only, that by dismissal of his appeal, California may continue to treat him, to rehabilitate him, and eventually to restore him to society free, let us hope, from the stigmata of his disease.

Respectfully submitted,

STANLEY MOSK,
Attorney General,

WILLIAM E. JAMES,
Assistant Attorney General,

GORDON RINGER,
Deputy Attorney General,

Attorneys for Appellee.

IN THE

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WALTER DUNBAR, Director of Corrections of the State of California,

Appellee.

On Appeal From the Supreme Court of the State of California.

REPLY TO MOTION TO DISMISS.

1. Appellant's position is not inconsistent with the holding in *Robinson v. California,* 370 U. S. 660. That case held in essence that persons who have lost the power of self control as to narcotic use are *not criminally accountable* for their condition. They must be treated as sick persons. Appellant's position is that the converse is also true. Persons who *are criminally accountable* must be given the safeguards of a criminal proceeding before they are confined for treatment or otherwise. The statute does not require and no court has found that appellant has lost the power of self control. Yet he is confined without benefit of the safeguards of a criminal proceeding.

2. *De La O* began his journey to confinement by being convicted of a criminal charge. (*In re De La O*, 59 A. C. 140, 145, 28 Cal. Rptr. 489.) The narrow question presented in his case was whether the identity of his offense and the type of confinement imposed were such as to bring him within the prohibition of *Robinson*. The case at bar, by contrast, presents the broader questions whether the same confinement, or any confinement, may be imposed *without* benefit of the safeguards of criminal proceedings upon persons *not* shown to be sick within the meaning of *Robinson*.

3. Appellee admits that the definition of the class of persons subject to commitment is so broad that a district attorney who enforced it to the limit of its terms would thereby make a fool of himself. (M. D. 4.) He thereby also admits that the determination as to who shall be exempted from the rigor of the law on medical grounds is vested in the district attorney. Surely a statute which produces such results merits the scrutiny of a plenary hearing on appeal.

4. Appellee construes the language of the California court in *In re De La O*, 59 A. C. 140, at pages 153-155, 28 Cal. Rptr. at pages 497-498, as saying only that habeas corpus is available to compel parole. We do not so interpret the language. However, if that is what the court meant, it left unanswered one very large question. By what constitutional authority may a person who has not been convicted of a crime and who has been pronounced, "cured," of his illness by a court in a habeas corpus proceeding be required to spend three years on parole?

5. Since the filing of appellee's motion to dismiss, appellant has been transferred from the California Re-

habilitation Center at Chino, California, to the Reception and Guidance Center, also at Chino. This is the facility to which most felony convicts from Southern California are initially sent. Appellant has advised his counsel that after a period of, "segregation," he is to be confined in a cell with felons. On these facts he falls squarely within the holding of the Supreme Court of Michigan in *In re Maddox,* 351 Mich. 358, 88 N. W. 2d 470, that such confinement on a civil commitment denies due process.

Respectfully submitted,

J. PERRY LANGFORD,
Attorney for Appellant.